UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

WOODBURY PARTNERS, LLC, d/b/a
THE INN AT FOX HOLLOW

and **Case No. 29-CA-28122**

ANA HERNANDEZ

WOODBURY PARTNERS, LLC, d/b/a
THE INN AT FOX HOLLOW

and **Case Nos. 29-CA-28164**
29-CA-28235

BERTA LUZ GARCIA

***Kevin Kitchen, Esq.,* for the General Counsel**
Jeffrey Meyer, Esq., (Kaufman, Dolowich & Voluck, LLP),
for the Respondent

SUPPLEMENTAL DECISION

Preliminary Statement

HOWARD EDELMAN, Administrative Law Judge: On December 5, 2007, I issued my Decision in this proceeding. On August 22, 2008, the Board issued an Order remanding this proceeding to me for the purpose of making additional credibility resolutions, findings and conclusions. In accordance with the Board's instruction and after reviewing the record and considering the Briefs filed, I hereby make the following:

Findings of Fact

The employees of Respondent were supervised by Alicia Arvelo, an admitted Section 2(11) supervisor, as stated in my Decision and the Remand. Unit employees resented the vulgar language used by Arvelo throughout her employment. On or about July 20, 2006[1] before the employees sought Union relief, the employees mailed a letter to Respondent complaining about the way they were being treated as described above. On August 17, the employees peacefully picketed Respondent's facility stating, "No more unjust firings, no more disrespect and no more Alicia Arvelo."

On October 3, the Union filed a petition covering a unit of housekeeping employees. On October 6, Respondent held a meeting with the employees. Anthony Scotto, the owner of

[1] All dates are in 2006, unless otherwise indicated.

Respondent's facility asked them why they needed the Union. This was the first time that Respondent was aware of Union activity.

On October 20, Scotto met again with the entire housekeeping staff. At this meeting employees Berta Luz Garcia testified that Scotto said, "Well I have done something for you. I let go of Alicia Arvelo, now I want you to help me. I do not want a union here." Employee Ana Hernandez testified Scotto said, "I am here to tell you that no more Alicia Arvelo here. Now I've met your demands. Now I want you to meet my demands. I do not want the Union over here because the Union will not guarantee your money. It's not a guarantee. It's just a blank piece of paper. The only thing the Union will do is take away your money."

Scotto did not give any testimony through the entire case. Franklin D. Manchester, General Manager, did not give any testimony concerning the October 20 meeting. On the other hand, Garcia and Hernandez' detailed testimony corroborated each other.

I find that Garcia and Hernandez are credible witnesses. Their testimony was detailed on direct and cross examination and consistent with each other. Moreover, I find that such testimony was unlikely to be manufactured, given their lack of knowledge of National Labor Relations Board law. Their testimony has the ring of truth.

As set forth above, Respondent presented no credible evidence to dispute charging parties' testimony. Scotto, the owner, who conducted the October 20 meeting, did not testify. Manchester, Respondent's general manager did not testify as to the crucial October 20 meeting.

The Board has long held that an employer violates Section 8(a)(1) where it discharges an unpopular supervisor in order to influence its employees' choice in an election. Such a discharge is viewed as the conferral of a benefit, and the circumstances may support an inference that the benefit is for the purpose of interfering with or coercing employees in their choice of representative. An employer may rebut this inference, however, by establishing an explanation other than the pending election. *Stanadyne Automotive Corp.,* 345 NLRB 85, 91 (2005), affd. in relevant part 520 F.3d 192 (2d Cir. 2008); *Honolulu Sporting Goods Co.,* 239 NLRB 1277, 1280 (1979).

"Similarly, an employer cannot time the announcement of [a] benefit in order to discourage union support, and the Board may separately scrutinize the timing of [a] benefit announcement to determine its lawfulness." *Stanadyne,* supra*,* quoting *Mercy Hospital Mercy Southwest Hospital,* 338 NLRB 545, 545 (2002). The standard for determining whether the announcement of a benefit during the critical period is unlawful is the same as the standard for determining whether the grant of benefit itself violates the Act. Thus, the Board will infer that an announcement of benefits during the critical period is motivated by an intent to influence the employee' choice in the election. However, an employer may rebut the inference by demonstrating a legitimate business reason for the timing of the announcement. *Stanadyne,* supra*; Mercy Hospital,* supra.

Moreover, the timing establishes that although Arvelo was engaged in the conduct described above, Respondent took no action until the employees brought in the Union on October 3, as set forth above.

Respondent contends that Arvelo was terminated for abusive conduct to the employees and that she would have been terminated as a result, notwithstanding Union activity. However, the facts establish that no action was taken against Arvelo during the months of June through October 6, even though the employees struck Respondent in protest of Arvelo's conduct on

August 17. It was only after Respondent had knowledge of the Union's presence, that Respondent terminated Arvelo, on October 20.

As set forth above, the credible testimony of Garcia and Hernandez, established Respondent's first knowledge of Union activity was when the Union filed its' petition on October 6, and thereafter on October 20 told its employees that he had terminated Arvelo and wanted in return for them to cease Union activity as a result. Moreover, as set forth above, the timing of the termination tends to further establish a violation.

Conclusions of Law

Accordingly, I find Respondent violated Section 8(a)(1) of the Act. See, *Stanadyne,* supra and *Burlington Times, Inc.*, 328 NLRB 750, 750-751.

With respect to the violation set forth above, I recommend that Respondent cease and desist from the conduct described above.

ORDER

I recommend that the previous Order issued by the Board be amended to add the following:

Cease and desist from discharging a supervisor in order to keep the Union out of their company.

I further recommend that the prior Appendix be amended to add the following:

WE WILL NOT discharge a supervisor in order to keep the Union out of our company.

Dated, Washington, D.C. , November 3, 2008.

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Howard Edelman
Administrative Law Judge